

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	5:21-CR-00023-EKD-JCH-1
)	
RICHARD E. MOORE)	

**DEFENDANT RICHARD E. MOORE’S MEMORANDUM IN SUPPORT OF
MOTION TO CONTINUE JURY TRIAL AND ALL ASSOCIATED DEADLINES**

NOW COMES Defendant RICHARD E. MOORE (“Mr. Moore”), by counsel and pursuant to 18 U.S.C. § 3161(h), in support of his Motion to Continue Jury Trial and All Associated Deadlines filed simultaneously herewith, and states as follows:

I. Relevant Procedural History

On December 9, 2021, a federal grand jury in the Western District of Virginia indicted Mr. Moore on ten counts of failure to account for and pay over trust fund taxes in violation of 26 U.S.C. § 7202. (Indictment, ECF No. 1.) On September 27, 2022, this Court issued a Notice Rescheduling the Jury Trial from November 7, 2022 to August 7, 2023. (ECF No. 38.)

II. Factual Assertions

The United States Court of Appeals for the Ninth Circuit has advised Mr. Moore’s first-undersigned attorney of record, who is lead counsel in this case, that he will be required to appear for an oral argument on behalf of the petitioner in *Fares Jeries Rabadi, M.D. v. U.S. Drug Enforcement Administration* (9th Cir. Jun. 9, 2022) during the week of August 14, 2023, in Anchorage, Alaska. Mr. Lowther informed the Ninth Circuit that he is scheduled to appear for a trial in this case during the week of August 7, 2023, and at least part of the week

of August 14, 2023; nonetheless, the Ninth Circuit advised him to move this Court to continue this trial based on that scheduling conflict.

II. Memorandum of Law

The Speedy Trial Act, 18 U.S.C. § 3161, *et seq.*, excludes from the computation time in which a trial must commence “[a]ny period of delay resulting from a continuance granted by any judge . . . at the request of the defendant . . . , if the judge granted such continuance on the basis . . . that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). A court, in its determination whether to grant a continuance and exclude any resulting period of delay from the Act’s computation of time, must consider, *inter alia*, whether its denial of the continuance will result in a “miscarriage of justice” (18 U.S.C. § 3161(h)(7)(B) (i)) or deny a party “the continuity of counsel” (18 U.S.C. § 3161(h)(7)(B)(iv)).

Mr. Moore respectfully submits that good cause exists for this Court to continue the trial in this case to allow him continuity of his counsel of choice and to prevent the miscarriage of justice that otherwise would result.

III. Conclusion

Mr. Moore, based on the foregoing assertions and argument, that this Court continue the trial and associated deadlines in this case.

Date: May 3, 2023

Respectfully submitted,

/s/ Joshua Sabert Lowther Esq.

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CERTIFICATE OF SERVICE

I certify that on May 3, 2023, I electronically filed the foregoing DEFENDANT RICHARD E. MOORE'S MEMORANDUM IN SUPPORT OF MOTION TO CONTINUE JURY TRIAL AND ALL ASSOCIATED DEADLINES with the Clerk of the United States District Court for the Western District of Virginia by way of the CM/ECF system, which automatically will serve this document on the attorneys of record for the parties in this case by electronic mail as follows:

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